(3)

IN THE HIGH COURT OF CHHATTISGARH AT BILASPUR

Writ Petition No. 2278 /2002.

PETITIONER : Smt. Saraswati Dalai
W/o Mahendra Dalai, aged 28 years.
R/o Samaleshwari Colony, Modipara
Sambalpur (Orrissa).

V E R S U S

RESPONDENTS : 1. State of Chhattisgarh,
Secretary, Department of Transport
D.K.Bhavan, Raipur (C.G.).
2. Asstt. Secretary,
State Transport Authority,
Raipur (C.G.).

P. R. No. 2283/02
Presented by Shri [illegible]
dated 19/6/02

WRIT PETITION UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA :

(31)

AFR

XI-HC-22

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक W.P.No.2278/02 सन् 200

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	8/1/2004 Shri B.K. Rawat, counsel for the petitioner. Dr. N.K. Shukla, Addl. Advocate General, with Shri Rajesh Pandey, Govt. Advocate, for the State. Heard finally. 2. By this writ petition under Article 226/227 of the Constitution of India, the petitioner has challenged the order dated 5/8/2002 (Annexure-P/5) passed by respondent no.2 whereby the tax of deluxe bus has been levied on the ordinary vehicle assuming it to be deluxe bus. 3. It is submitted by the learned counsel for the petitioner that the route on which the vehicle is plying is an inter-State and a permit Annexure-P/1 is issued. This permit is issued by the State Transport Authority, Orissa and is only to be counter-signed by the State Transport Authority, Raipur. It is further submitted that on the top of the permit, it is written as	

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उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक ..... सन् 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -2-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

Ordinary Service. It has been counter-signed so vide Annexure-P/2 by the State Transport Authority, Raipur.

4. It is contended by the learned counsel for the petitioner that under Section 3 of the M.P. Motoryan Karadhan Adhiniyam, 1991, the tax is to be imposed.

5. Sub-section (1) of Section 3 of the aforesaid Adhiniyam is relevant and is quoted below:

> "3. **Levy of tax on Motor Vehicles**- (1) A tax shall be levied on every motor vehicle used or kept for use in the State at the rate specified in the First Schedule:
> Provided that in the case of motorcycles with or without attachment, invalid carriages and motorcars, the tax shall be levied at the rates specified in the Second Schedule;
> Provided further that in respect of a motor vehicle passing through the State from a manufacturer to a dealer under a temporary certificate of registration for a period not exceeding one month, the rate of tax shall be one third of the tax payable for a quarter."

6. It is further contended that the tax chargeable shall be as per Article IV(d)(4) of First Schedule as amended by the Act

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आदेश पत्रक

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आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -3-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

No.26 of 1991 and M.P. Act No.27 of 1994 and since the permit is for ordinary service, the tax has to be for that of ordinary service. It is also contended that respondent no.2 has not at all considered that the permit is for ordinary service and he has failed to consider the provision and just passed the order levying the tax of deluxe bus assuming it to be deluxe bus.

7. The aforesaid Article IV(d)(4) of First Schedule is relevant and is quoted below:

> "IV.(d)(4)- In respect of vehicles of other State permitted to ply as ordinary service for every passenger which the vehicle is permitted to carry and where the permit is counter-signed-
> (i) Under a Reciprocal Agreement-Rs.6.60 for each 10 kms. or part thereof per seat per month.
> (ii) Without a Reciprocal Agreement-Rs.11.00 per seat per month plus Rs.6.60 for each 10 kms. or part thereof per seat per month."

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उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

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आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -4-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	8. On perusal of the order impugned, it appears that the provisions of the Adhiniyam have not been considered and discussed at all. Even the certified copy, which is a photocopy of the order, goes to show that the Authority does not have the full scap paper. It is the duty of the State to provide an infrastructure and atleast full scap paper. 9. Having considered the facts and circumstances of the case and material on record, in the opinion of this Court, the impugned order is set-aside. The matter is remanded back to decide afresh after hearing the parties concerned. 10. The petition is allowed. **Sd/-** **Fakhruddin** **Judge**	

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